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**IN THE  
COURT OF APPEALS OF INDIANA**

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|----------------------|---|-----------------------|
| DONALD FINCH,        | ) |                       |
|                      | ) |                       |
| Appellant-Defendant, | ) |                       |
|                      | ) |                       |
| vs.                  | ) | No. 49A04-0608-CR-416 |
|                      | ) |                       |
| STATE OF INDIANA,    | ) |                       |
|                      | ) |                       |
| Appellee.            | ) |                       |

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APPEAL FROM THE MARION SUPERIOR COURT  
CRIMINAL DIVISION 17  
The Honorable Carol J. Orbison, Judge  
The Honorable Danielle Gaughan, Commissioner  
Cause No. 49G17-0601-CM-000390

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**May 16, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SULLIVAN, Judge**

Following a bench trial, Appellant, Donald Finch, was convicted of Battery as a Class B misdemeanor,<sup>1</sup> and was sentenced to one hundred and eighty days with one hundred and seventy-two days suspended, with credit for eight days time served and one year of probation. Upon appeal, Finch argues that the evidence is insufficient to support his conviction. Finch further argues that the abstract of judgment should be corrected to accurately reflect his conviction for the lesser-included offense of Battery as a Class B misdemeanor.

We affirm but remand with instructions.

The facts most favorable to the conviction reveal that on January 3, 2006, Finch and his wife, Victoria, who at that time were separated, became involved in a heated verbal and physical confrontation at the home of Jacqueline Johnson, where Victoria was staying with the two children she shared with Finch. During the confrontation, Finch became “very angry” and eventually “exploded,” yelling and cursing at Victoria. Transcript at 8, 7. Finch moved toward Victoria, pushing her toward a wall. Ultimately, Finch “pinned [Victoria] against the wall” and was “poking [her] with his finger in [her] face,” which Victoria testified resulted in marks under her eye and on her chin. Transcript at 8. In an attempt to break free from Finch, Victoria found herself on the floor with Finch standing over her “just ranting.” Transcript at 8. Victoria yelled for someone to call 911. Victoria was eventually able to stand up, but Finch approached her again, so she began pushing him away. After the police were called, Finch left the residence.

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<sup>1</sup> Ind. Code § 35-42-2-1 (Burns Code Ed. Supp. 2006).

As a result of this incident, the State charged Finch with domestic battery as a class A misdemeanor and battery as a Class A misdemeanor. A bench trial was held on July 7, 2006. At the conclusion of the evidence, the trial court found Finch not guilty of domestic battery and guilty of the lesser-included offense of battery as a Class B misdemeanor.

Upon appeal, Finch argues that the evidence is insufficient to support his conviction for battery as a Class B misdemeanor. When reviewing a challenge to the sufficiency of the evidence, this court will neither reweigh evidence nor judge witness credibility, but instead, considering only the evidence which supports the conviction along with the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have concluded that the defendant was guilty of the charged crime beyond a reasonable doubt. Kien v. State, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), trans. denied.

Finch maintains that according to his version of events in which he claims that Victoria accidentally fell to the floor, and Victoria's further explanation upon cross-examination that she could not remember if Finch pushed her or if she fell to the floor, the evidence does not establish that he knowingly or intentionally touched Victoria in a rude, insolent, or angry manner. See I.C. § 35-42-2-1(a). Finch's argument is simply an invitation that we reweigh the evidence, a task which we are not inclined to do upon appeal. Here the State presented sufficient evidence, as recounted above, to establish each element of the offense of battery as a Class B misdemeanor beyond a reasonable doubt. Indeed, regardless of whether Victoria accidentally fell to the floor or was pushed

by Finch, the evidence demonstrates that Finch knowingly or intentionally touched Victoria in a rude, insolent, or angry manner when he pushed her up against a wall, pinned her there, and poked her in the face with his finger, all in a fit of rage. The evidence is sufficient to sustain Finch's conviction for battery as a Class B misdemeanor.

Finch next argues that the abstract of judgment should be corrected to accurately reflect the trial court's in-court pronouncement convicting Finch of the lesser-included offense of battery as a Class B misdemeanor. We recognize that the abstract of judgment is a form used by the Department of Correction. See Robinson v. State, 805 N.E.2d 783, 794 (Ind. 2004).<sup>2</sup> It remains, however, that the court's judgment of conviction, not the abstract of judgment, is the official trial court record and the controlling authority. Id.

Here, the transcript of the bench trial makes clear that the trial court entered a judgment of conviction against Finch for the lesser-included offense of battery as a Class B misdemeanor, not battery as a Class A misdemeanor as charged,<sup>3</sup> and that the trial court sentenced Finch to 180 days, with 172 days suspended and one year of probation.<sup>4</sup> However, the abstract of judgment indicates that Finch was convicted of "BATTERY/MA," presumably referring to a conviction for battery as a Class A misdemeanor, which is inconsistent with the trial court's entry of a judgment of conviction for battery as a Class B misdemeanor.<sup>5</sup> Although there is no effective relief to

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<sup>2</sup> The Robinson Court held that a motion to correct erroneous sentence was not the proper means by which to seek corrections of claimed errors or omissions in an abstract of judgment.

<sup>3</sup> The chronological case summary simply indicates that Finch was found guilty of count 2.

<sup>4</sup> The sentence imposed is consistent with that for Class B misdemeanor offenses. See Ind. Code § 35-50-3-3 (Burns Code Ed. Repl. 2004).

<sup>5</sup> We note that the sentence imposed is properly set out in the abstract of judgment.

be gained from correction of the abstract of judgment, we nevertheless direct the trial court to modify the abstract of judgment to comport with the actual fact that Finch was convicted of battery as a Class B misdemeanor.<sup>6</sup>

The judgment of the trial court is affirmed, but we remand with instructions for the trial court to correct the abstract of judgment.

SHARPNACK, J., and CRONE, J., concur.

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<sup>6</sup> The State does not oppose such an order.